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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. JUSTIN LAMAR HOLLINGQUEST, Defendant and Appellant.	2d Crim. No. B292958 (Super. Ct. No. 18PT-00669) (San Luis Obispo County)

Justin Lamar Hollingquest appeals the trial court's order declaring him a mentally disordered offender (MDO) and committing him to the Department of Mental Health for treatment. (Pen. Code,[1] § 2962 et seq.) Appellant contends the evidence is insufficient to support the finding that his commitment offense of vehicle theft (Veh. Code, § 10851, subd. (a)) involved a threat to use force or violence likely to produce

[1] All statutory references are to the Penal Code unless otherwise stated.

substantial physical harm, as provided in section 2962, subdivision (e)(2)(Q). We affirm.

FACTS AND PROCEDURAL HISTORY

In 2017, appellant was convicted of vehicle theft and was sentenced to two years in state prison. In January 2018, the Board of Prison Terms determined that appellant met the MDO criteria and sustained the requirement of treatment as a condition of his parole. Appellant petitioned for a hearing, counsel was appointed to represent him, and he waived his right to a jury.

Dr. Matthew Milburn, a forensic psychologist at Atascadero State Hospital, testified at the hearing. After interviewing appellant, reviewing his records, and consulting with his treatment team, Dr. Milburn opined that he met the MDO criteria. Appellant suffers from a severe mental disorder, i.e., other specified schizophrenia spectrum and other psychotic disorder. His symptoms include auditory hallucinations, delusions, and paranoia. The doctor also concluded that appellant's mental disorder was a cause or aggravating factor in his commission of the commitment offense, that his disorder was in remission but could not be kept in remission without treatment, and that by reason of his disorder he represented a substantial danger of physical harm to others.

To prove that appellant's commitment offense of vehicle theft qualified him for MDO treatment, the People introduced a copy of the police report regarding the offense. (§ 2962, subd. (f).) Bakersfield Police Officer Bryon Sandrini states in the report that "[o]n 03-18-17 at approximately 0844 hours myself and [my partner] were dispatched to the area of 24th St[.] and Oak St[.] regarding a subject who had been riding on the outside of a white

suv [*sic*] and was now running southbound through Beach [P]ark. The subject was described as a [¶] Black Male Adult not wearing a shirt. [¶] As we were arriving on scene we learned that the subject had stolen a golf cart from the service area of Jim Burke Ford at 2001 Oak St[.] and was last seen southbound on Oak St[.] over the bridge over the railroad tracks, toward California Ave. As I approached California Ave[.] I observed [appellant] with no shirt on driving a golf cart out of the parking lot on the northeast corner of California Ave[.] and Oak St. [Appellant] drove the golf cart eastbound in the westbound #1 lane of California Ave[.] causing several vehicles to swerve to avoid a collision." After the officer activated his overhead lights and siren, appellant made a sharp right turn across the center median and continued driving south on Beech Street. Appellant eventually abandoned the golf cart, jumped a fence, and climbed onto the roof of a house. He later surrendered and was taken into custody.

At the conclusion of the hearing, the trial court found beyond a reasonable doubt that appellant met the MDO criteria and ordered him committed for treatment. In finding that appellant's commitment offense involved a threat of force or violence as contemplated in section 2962, subdivision (e)(2)(Q), the court stated: "I have had an opportunity to review carefully . . . the [police] report from the Bakersfield incident . . . . It is clear from the description of that [incident] that in fleeing from the officers, [appellant], according to that report, went into the wrong lane of traffic causing several vehicles to swerve to avoid a collision. [W]hile this is not an enumerated offense under Penal Code section 2962, I do believe that it would qualify . . . [as a] crime in which the perpetrator . . . expressly or impliedly threatened another with the use of force or violence likely to

produce . . . physical harm in such a manner that a reasonable person would believe, and expect that the force or violence would be used."

DISCUSSION

Appellant contends the evidence is insufficient to sustain the finding that his commitment offense of vehicle theft (Veh. Code, § 10851) involved a threat to use force or violence as contemplated in subdivision (e)(2)(Q) of section 2962. We disagree.

"'The substantial evidence rule applies to appellate review of the sufficiency of the evidence in MDO proceedings. [Citation.] We review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence—"evidence that is reasonable, credible, and of solid value"—such that a reasonable trier of fact could find beyond a reasonable doubt that the commitment offense was a qualifying offense under the MDO statute. [Citation.]' [Citation.]" (*People v. Warren* (2019) 33 Cal.App.5th 749, 755 (*Warren*).)

To commit appellant for MDO treatment as a condition of his parole, the trial court had to find beyond a reasonable doubt that the offense for which he was sentenced to prison—vehicle theft in violation of Vehicle Code section 10851, subdivision (a)[2]—is a qualifying offense. (§ 2962, subd. (e).) The trial court found that appellant's offense was "[a] crime in which the perpetrator

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[2] Subdivision (a) of Vehicle Code section 10851 provides in pertinent part that "[a]ny person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, . . . is guilty of a public offense . . . ."

expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used." (§ 2962, subd. (e)(2)(Q).) The court made this finding based on the evidence that appellant drove the stolen golf cart directly toward other vehicles, forcing those vehicles to swerve to avoid a collision.

Appellant contends the court's finding must be reversed because "there was no evidence that [he] intentionally sought or attempted to hurt anyone. To the contrary, the evidence showed that appellant was fleeing from police, and that, when he realized that he was going against traffic, swerved and ultimately left the road."

The evidence, however, did not have to establish that appellant "intentionally sought or attempted to hurt someone." Moreover, his assertions regarding the manner in which he drove the stolen golf cart disregard the standard of review, which requires us to view the evidence in the light most favorable to the court's ruling. (*Warren*, *supra*, 33 Cal.App.5th at p. 755.) The evidence, when so viewed, establishes that in fleeing with the stolen golf cart appellant deliberately drove the vehicle on the wrong side of the street and directly toward oncoming traffic, causing those vehicles to swerve to avoid a collision. This evidence is sufficient to prove beyond a reasonable doubt that the offense was one "in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used." (§ 2962, subd. (e)(2)(Q).)

Appellant alternatively contends that even if he drove the golf cart in a manner that threatened others with the use of force or violence, that conduct cannot be considered in determining whether his crime was an MDO qualifying offense. He offers that he "was never charged with reckless driving . . . or any other offense as a result of his conduct in driving the stolen golf cart the wrong way on a public highway. To the contrary, [his] offense consisted of the theft of the cart, which was complete upon the actual taking of the vehicle, and any offenses that [he] may have committed after that time cannot be considered as constituting a crime of force or violence."

We are not persuaded. Appellant's claim is premised on the rule that "'other crimes the prisoner may have committed in perpetrating the commitment offense are irrelevant to the determination whether that offense meets the criteria for MDO treatment.' [Citations.]" (*Warren*, *supra*, 33 Cal.App.5th at p. 756.) That rule, however, has no application here. Appellant was convicted under subdivision (a) of Vehicle Code section 10851, which proscribes both the unlawful taking *and* driving of a vehicle without or without the intent to steal.

Moreover, the "taking" element of a theft "has two aspects: (1) achieving possession of the property, known as 'caption,' and (2) carrying the property away, or 'asportation.' [Citations.] Although the slightest movement may constitute asportation [citation], the theft continues until the perpetrator has reached a place of temporary safety with the property. [Citation.]" (*People v. Gomez* (2008) 43 Cal.4th 249, 255.) Here, the evidence indicates that appellant never reached a place of temporary safety after he took the golf cart. The police began pursuing appellant shortly after he committed the theft, appellant fled,

and he ultimately abandoned the vehicle in an attempt to evade arrest. As the People aptly put it, "[a]ppellant's theft continued during his entire drive." Appellant's conduct in driving the vehicle was thus properly considered in determining whether the offense qualifies him for MDO treatment.

DISPOSITION

The judgment (MDO commitment order) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jacquelyn H. Duffy, Judge
Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Annalee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.